

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERICAN DIAGNOSTIC MEDICINE,
INC.,

Plaintiff,

v.

ROBERT WALDER; PAUL KAPLAN; and
DOES 1 through 100, inclusive,

Defendants.

And related counter-claims.

Civil No. 07cv2401-W (CAB)

**CASE MANAGEMENT CONFERENCE
ORDER REGULATING DISCOVERY AND
OTHER PRETRIAL PROCEEDINGS
(Fed. R. Civ. P. 16)
(Local Rule 16.1)
(Fed. R. Civ. P. 26)**

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a Case Management Conference was held on April 23, 2008. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, IT IS HEREBY ORDERED:

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **May 23, 2008**.

2. A Mandatory Settlement Conference shall be conducted on **July 21, 2008**, at **2:00 p.m.** in the chambers of Magistrate Judge Cathy Ann Bencivengo. Counsel shall submit **confidential** settlement statements **directly to chambers** no later than **July 14, 2008**. Each party's settlement statement shall set forth the party's statement of the case, identify controlling legal issues, concisely set out issues of liability and damages, and shall set forth the party's

1 settlement position, including the last offer or demand made by that party, and a separate statement
 2 of the offer or demand the party is prepared to make at the settlement conference. **Settlement**
 3 **conference briefs shall not be filed with the Clerk of the Court, nor shall they be served on**
 4 **opposing counsel.**

5 3. Pursuant to Local Civil Rule 16.3, all party representatives and claims adjusters for
 6 insured defendants with full and unlimited authority¹ to negotiate and enter into a binding
 7 settlement, as well as the principal attorney(s) responsible for the litigation, must be present and
 8 legally and factually prepared to discuss and resolve the case at the mandatory settlement
 9 conference. Retained outside corporate counsel shall not appear on behalf of a corporation as the
 10 party who has the authority to negotiate and enter into a settlement. For good cause, Magistrate
 11 Judge Bencivengo may excuse a party or representative from personal attendance provided such
 12 party or parties will be available by telephone during the conference. Failure to attend the
 13 conference or obtain proper excuse will be considered grounds for sanctions.

14 4. On or before **September 12, 2008**, all parties shall exchange with all other parties
 15 a list of all expert witnesses expected to be called at trial. The list shall include the name, address,
 16 and phone number of the expert and a brief statement identifying the subject areas as to which the
 17 expert is expected to testify. The list shall also include the normal rates the expert charges for
 18 deposition and trial testimony. On or before **September 26, 2008**, any party may supplement its
 19 designation in response to any other party's designation so long as that party has not previously
 20 retained an expert to testify on that subject.

21 5. All fact discovery shall be completed on or before **October 3, 2008**. "*Completed*"
 22 means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure must be
 23 initiated a sufficient period of time in advance of the cut-off date, so *that it may be completed* by
 24 the cut-off date, taking into account the times for services, notice, and response as set forth in the

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 26 ¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore
 27 settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co.,
 28 Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and
 authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481, 485-486 (D.
 Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes
 that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum
 certain of authority is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 Federal Rules of Civil Procedure. All discovery motions must be filed within 30 days of the
 2 service of an objection, answer or response which becomes the subject of dispute or the passage of
 3 a discovery due date without response or production, and only after counsel have met and
 4 conferred and have reached impasse with regard to the particular issue.

5 6. Each expert witness designated by a party shall prepare a written report to be
 6 provided to all other parties **no later than October 20, 2008**, containing the information required
 7 by Fed. R. Civ. P. 26(a)(2)(A) and (B).

8 **Except as provided in the paragraph below, any party that fails to make these**
 9 **disclosures shall not, absent substantial justification, be permitted to use evidence or**
 10 **testimony not disclosed at any hearing or at the time of trial. In addition, the Court may**
 11 **impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

12 7. Any party, through any expert designated, shall in accordance with Fed. R. Civ. P.
 13 26(a)(2)(C) and Fed. R. Civ. P. 26(e), supplement any of its expert reports regarding evidence
 14 intended solely to contradict or rebut evidence on the same subject matter identified in an expert
 15 report submitted by another party. Any such supplemental reports are due on or before **November**
 16 **3, 2008**.

17 8. All expert discovery shall be completed on or before **November 24, 2008**.
 18 “*Completed*” means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure
 19 must be initiated a sufficient period of time in advance of the cut-off date, so *that it may be*
 20 *completed* by the cut-off date, taking into account the times for services, notice, and response as
 21 set forth in the Federal Rules of Civil Procedure. All discovery motions must be filed within 30
 22 days of the service of an objection, answer or response which becomes the subject of dispute or the
 23 passage of a discovery due date without response or production, and only after counsel have met
 24 and conferred and have reached impasse with regard to the particular issue.

25 9. All motions, other than motions to amend or join parties, or motions in limine,
 26 shall be **FILED** on or before **December 22, 2008**.

27 Please be advised that counsel for the moving party must obtain a motion hearing date
 28 from the law clerk of the judge who will hear the motion. Be further advised that the period of

1 time between the date you request a motion date and the hearing date may vary from one judge to
2 another. Please plan accordingly. For example, you may need to contact the judge's law clerk in
3 advance of the motion cut-off to assess the availability of the Court's calendar. **Failure of counsel**
4 **to timely request a motion date may result in the motion not being heard.**

5 Pursuant to Civil Local Rule 7.1(f)(3)(c), if an opposing party fails to file opposition
6 papers in the time and manner required by Civil Local Rule 7.1(e)(2), that failure may constitute a
7 consent to the granting of a motion or other request for ruling by the court. Accordingly, all
8 parties are ordered to abide by the terms of Local Rule 7.1(e)(2) or otherwise face the prospect of
9 any pretrial motion being granted as an unopposed motion pursuant to Civil Local Rule
10 7.1(f)(3)(c).

11 Should either party choose to file or oppose a motion for summary judgment or partial
12 summary judgment, no Separate Statement of Disputed or Undisputed Facts is required.

13 10. Briefs or memoranda in support of or in opposition to any pending motion shall
14 not exceed twenty-five (25) pages in length without permission of the judge or magistrate judge
15 who will hear the motion. No reply memorandum shall exceed ten (10) pages without leave of the
16 judge or magistrate judge who will hear the motion.

17 11. Despite the requirements of Civil Local Rule 16.1(f), neither party is required to
18 file Memoranda of Contentions of Fact and Law at any time. The parties shall instead focus their
19 efforts on drafting and submitting a proposed pretrial order by the time and date specified by Local
20 Rule 16.1(f)(6).

21 12. All parties or their counsel shall also fully comply with the Pretrial Disclosure
22 requirements of Fed. R. Civ. P. 26(a)(3) on or before **April 6, 2009**. **Failure to comply with**
23 **these disclosures requirements could result in evidence preclusion or other sanctions under**
24 **Fed. R. Civ. P. 37.**

25 13. Counsel shall meet together and take the action required by Local Rule 16.1(f)(4)
26 on or before **April 13, 2009**. At this meeting, counsel shall discuss and attempt to enter into
27 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
28 exchange copies and/or display all exhibits other than those to be used for impeachment. The

1 exhibits shall be prepared in accordance with Local Rule 16.1 (f)(3)(c). Counsel shall note any
2 objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ. P. 26(a)(3).
3 Counsel shall cooperate in the preparation of the proposed pretrial conference order.

4 14. The proposed final pretrial conference order, including objections they have to any
5 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged
6 with the Clerk of the Court on or before **April 20, 2009**, and shall be in the form prescribed in and
7 in compliance with Local Rule 16.1 (f)(6). Counsel shall also bring a court copy of the pretrial
8 order to the pretrial conference.

9 15. In addition to submitting the proposed final pretrial conference order, the parties
10 are further ordered to separately submit informal letter briefs, not exceeding two single spaced
11 pages, served on opposing counsel and received in the chambers of the **Honorable Thomas J.**
12 **Whelan**, United States District Court Judge (and not filed with the Clerk's Office) no later than
13 **April 20, 2009**.

14 The letter brief should be a relatively informal and straightforward document. The letter
15 brief should outline a short, concise and objective factual summary of the party's case in chief, the
16 number of hours/days each party intends to expend at trial, the approximate number of witnesses,
17 whether certain witnesses will be coming in from out of town, the number of testifying expert
18 witnesses, whether any unique demonstrative exhibits may be presented, the number of proposed
19 motions in limine that may be filed, precisely when the parties would be prepared to submit their
20 in limine papers (and whether the parties have met and conferred with respect to in limine issues),
21 the issue of proposed jury instructions and when the parties intend to submit them before trial, and
22 voir dire issues, either party's preference as to what date(s) the trial should begin and any other
23 pertinent information that either party may deem useful to assist the Court in the execution of the
24 pretrial conference and in setting the matter for trial.

25 16. The final pretrial conference shall be held before the **Honorable Thomas J.**
26 **Whelan**, United States District Court Judge, on **April 27, 2009**, at **10:30 a.m.**

27 17. The dates and times set forth herein will not be modified except for good cause
28 shown.

1 18. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case
2 hereafter.

3 DATED: April 23, 2008

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6 **CATHY ANN BENCIVENGO**
United States Magistrate Judge